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STATE HOUSE ANNEX  
25 CAPITOL STREET  
CONCORD, NEW HAMPSHIRE 03301-6397ASSISTANT ATTORNEYS GENERAL  
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March 4, 1983

Mr. Thomas L. Sweeney  
Chief  
Bureau of Solid Waste Management  
Office of Waste Management  
Hazen Drive  
Concord, New Hampshire 03301

Dear Mr. Sweeney:

By memorandum of February 16, 1983, you requested an explanation of our advice to you concerning: 1) fees which the Bureau of Solid Waste Management (Bureau) may charge for permits under RSA 149-M:10,III; and 2) the scope of the exemption from participation in a solid waste management district for single town districts under RSA 149-M:20,IV. Specifically, you want to know whether the Bureau must establish fixed fees or may it charge an applicant for the actual costs incurred by the Bureau, and whether a town with an approved solid waste disposal facility is deemed to be an approved single town district under RSA 149-M:20,IV. It is my conclusion that the Bureau must establish fixed permit fees and that approval of a municipal facility does not constitute an approval of a single town district under RSA 149-M:20,IV.

RSA 149-M:10,III authorizes the Bureau to "require payment of a reasonable fee, set by rules adopted under RSA 149-M:8," as a condition of any permit required (emphasis added). This statute expresses the legislature's intent that fixed permit fees be established by the Bureau. It does not authorize recovery of the costs associated with permit application review and hearing procedures. If the legislature had intended the latter, it would have expressed its intent in statutory language similar to RSA 162-F:7,V which specifically authorizes the Site Evaluation Committee to "employ a consultant or consultants, legal counsel and other staff in furtherance of the duties imposed by this chapter, the cost of which shall be borne by the applicants in such amounts as may be approved by the commission." The omission of similar language from RSA 149-M is evidence of



Mr. Thomas L. Sweeney  
March 4, 1983  
Page Two

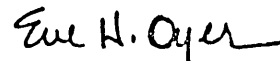
the legislature's intent not to grant the Bureau's authority to charge an applicant for the costs of reviewing its permit application. See Sigel v. Boston & Maine R.R. Co., 107 N.H. 8 (1966).

Please note, however, that RSA 149-M does not preclude the Bureau from considering processing costs in establishing permit fees, nor does it preclude the Bureau from establishing different fees for different types of permitted facilities. The permit fees established may be different for different types of facilities and may properly cover the reasonably anticipated costs of reviewing the application, Cox v. State of New Hampshire, 312 U.S. 569 (1941). It is our conclusion, therefore, that RSA 147-M:10,III authorizes the Bureau to establish permit fees based on reasonably anticipated administrative costs, but does not authorize the Bureau to recover such costs from permit applicants.

As to your second question, it is our conclusion that the Bureau's approval of a municipal disposal facility under RSA 149-L (repealed and replaced by RSA 149-M) does not constitute an automatic approval of a single town district under either RSA 149-L or RSA 149-M:20,IV. Prior to the enactment of RSA 149-M in 1982, the Bureau was authorized to designate solid waste management districts to promote planning and cooperative efforts in waste management. RSA 149-L:11. Any single town district approved by the Bureau under this statute is deemed to be an approved single town district under RSA 149-M:20,IV. A town with a permitted public facility approved by the Bureau under RSA 147-L:25 is not necessarily single town district approved by the Bureau under RSA 147-L:11. These two statutory provisions impose separate and distinct responsibilities on towns. Compliance with the requirements of one provision does not necessarily satisfy the requirements of another. Consequently, only towns expressly approved by the Bureau as single town districts under RSA 147-L:11 are deemed to be approved single town districts for the purposes of RSA 149-M:20,IV.

I trust the above explanation adequately addresses the issues raised in your memo. If you have any further questions, please do not hesitate to call.

Yours truly,



Eve H. Oyer  
Attorney

Environmental Protection Div.